

REMARKS

Claims 54-66 are pending in the application. Claims 54, 55, 60 and 61 have been amended. Claims 67-76 have been added. No new matter is presented. The amendments to the claims and the newly added claims are fully supported in the specification. Reconsideration is requested.

Personal Interview

Applicant and the undersigned attorney would like to thank the Examiner for the courtesies extended during the personal interview held October 6, 2005. The Interview Summary prepared by the Examiner and initialed by the undersigned attorney accurately reflects the substance of the interview. No further description of the interview is deemed necessary.

Claim Rejection Under 35 U.S.C. § 112

Claim 65 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claim 65 has been canceled, therefore obviating the rejection. Further, claim 66, which depends from 65 also has been canceled.

Claim Objections

Claim 61 has been objected to under 37 C.F.R. § 1.75(c) as being of improper dependent form for failure to further limit the subject matter of a previous claim. Claim 61 has been amended to recite that the cardiac harness "includes rows of hinge elements" adapted to exert pressure on the heart in the range of 3-4 mm Hg. Claim 61 now contains structure further limiting independent claim 60, therefore the claim objection under 37 C.F.R. § 1.75(c) has been obviated.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 54-66 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Cox et al. (U.S. Patent No. 5,150,706). Applicant respectfully traverses. Cox et al. fails to disclose a cardiac harness being compressible to be implanted about the heart minimally invasively. Notwithstanding the shortcomings of Cox et al., Applicant has amended claims 54 and 60 to recite that the cardiac harness is formed of a metallic material. Cox does not disclose a metallic material for the mesh netting, and therefore does not disclose every feature set forth in independent claims 54 and 60. Accordingly, independent claims 54 and 60, and the claims that depend therefrom (55-59 and 61-64) are patentably distinguishable over Cox et al., and it is requested that the rejection under § 102(b) be withdrawn.


Claims 54-66 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Alferness (U.S. Patent No. 5,702,343). Applicant respectfully traverses. The Alferness heart jacket is not self-sizing. Throughout the disclosure, it is clear that the jacket is nothing more than a corset that must be hand stitched onto the heart and sized on a non-beating heart. At numerous places in the Alferness disclosure, it states that there are mechanisms for selectively adjusting the size of the jacket, not "self-sizing" as recited in claim 54 (See e.g., column 4, lines 41-65). Further, claim 54 has been amended to recite the cardiac harness being formed from "a metallic material." The jacket of Alferness is not formed from a metallic material, accordingly the disclosure does not teach every element of the claim. It is respectfully urged that independent claim 54 is patentably distinguishable over the Alferness patent and it is requested that the § 102(b) rejection be withdrawn. For the same reasons, dependent claims 55-64 also are patentably distinguishable over the Alferness patent.

Conclusion

Claims 54-64 and 67-76 are pending in the application. Reconsideration is respectfully requested. If the Examiner believes that a telephone conference would facilitate prosecution of the application, the undersigned can be reached at (310) 824-5555.

Respectfully submitted,

FULWIDER PATTON LEE & UTECHT, LLP

By: 
John S. Nagy
Registration No. 30,664

JSN:jeb

Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045
Telephone: (310) 824-5555
Facsimile: (310) 824-9696
Customer No. 24201
104692.1